

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
CHILD SUPPORT SERVICES DIVISION**

**CHAPTER 1240-2-4
CHILD SUPPORT GUIDELINES**

TABLE OF CONTENTS

| | | | |
|--------------|------------------------|--------------|---|
| 1240-2-4-.01 | Necessity and Function | 1240-2-4-.03 | Guidelines for Calculating Child Support Awards |
| 1240-2-4-.02 | Purposes and Premises | 1240-2-4-.04 | Criteria for Deviation from Guidelines |

1240-2-4-.01 NECESSITY AND FUNCTION

- (1) The Child Support Amendments of 1984 (PL 98-378) required that states establish guidelines pursuant to judicial or administrative action for setting child support award amounts. The guidelines have to be made available to all persons in the state whose duty it is to set child support award amounts in all child support cases. The guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation.
- (2) TCA § 36-5-101 requires that there must be a rebuttable presumption in all child support cases that the amount of child support determined by an application of these guidelines is the correct amount to be awarded unless the court makes a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case. Such a finding would sufficiently rebut the presumption in that case. The rebuttable presumption must be applied to all child support awards even if the order is being sought for a retroactive period before October 13, 1989.
- (3) TCA § 36-5-101 provides that the guidelines promulgated herein shall be applied as a rebuttable presumption in child support cases and that if a court finds that the evidence is sufficient to rebut this presumption, it must make a written finding that the application of the child support guidelines would be unjust or inappropriate in that particular case in order to provide for the best interest of the child or the equity between the parties and the court must show what the child support award would have been without the deviation.
- (4) These guidelines were developed by reviewing other states' guidelines; recommendations made by the United States Office of Child Support Enforcement; informal polls of judicial practices in Tennessee; comments on these guidelines by advocacy groups, judges, Title IV-D contractors, and attorneys; comments presented at a public hearing and written comments submitted after the hearing; and recommendations from the Tennessee Supreme Court Child Support Guidelines Committee.
- (5) Presented herein are the rules promulgated by the Department of Human Services in compliance with these requirements.

Authority: *Public Law 98-378; 42 USCA § 667(b) and 45 CFR § 302.56; Public Law 100-485; Public Chapter 206, Acts of 1989. Administrative History:* *New rule filed December 18, 1987; effective February 1, 1988. Amendment filed August 25, 1989; effective October 13, 1989. Amendment filed September 1994; effective December 14, 1994.*

1240-2-4-.02 PURPOSES AND PREMISES

- (1) The Department of Human Services will comply with federal and state requirements to promulgate guidelines to be used in setting awards of child support.
- (2) The major goals in the development of these guidelines are:
 - (a) To decrease the number of impoverished children living in single parent families.

(Rule 1240-2-4-.02, continued)

- (b) To make child support awards more equitable by ensuring more consistent treatment of persons in similar circumstances.
 - (c) To improve the efficiency of the court process by promoting settlements and by giving courts and parties guidance in establishing levels of support awards.
 - (d) To encourage parents paying support to maintain contact with their child(ren).
 - (e) To ensure that when parents live separately, the economic impact on the child(ren) is minimized and to the extent that either parent enjoys a higher standard of living, the child(ren) share(s) in that higher standard.
 - (f) To ensure that a minimum amount of child support is set for parents with a low income in order to maintain a bond between the parent and the child, to establish patterns of regular payment, and to enable the enforcement agency and party receiving support to maintain contact with the parent paying support.
- (3) These guidelines shall be applicable in any action brought to establish or modify child support, whether temporary or permanent. For the purposes of defining a significant variance between the guideline amount and the current support order pursuant to TCA § 36-5-101, a significant variance shall be at least 15% if the current support is one hundred dollars (\$100.00) or greater per month and at least fifteen dollars (\$15.00) if the current support is less than \$100.00 per month. Such variance would justify the modification of a child support order unless, in situations where a downward modification is sought, the obligor is willfully and voluntarily unemployed or underemployed. Upon a petition for adjustment by either party, the court shall increase or decrease the award amount as appropriate in accordance with these guidelines unless the significant variance occurs due to a previous decision of the court to deviate from the guidelines and the circumstances which caused the deviation have not changed.
- (4) Stipulations presented to the court shall be reviewed by the court before approval. No hearing shall be required. However, the court shall use the guidelines in reviewing the adequacy of child support orders negotiated by the parties. The court shall require that stipulations in which the guidelines are not met must provide a justification for the deviation which takes into consideration the best interest of the child and must state the amount which would have been required under the guidelines.
- (5) These guidelines are a minimum base for determining child support obligations. Factors justifying upward adjustments for support include expenses for health care insurance coverage for the child if the parent paying support is not already providing this, less than average overnight visitation being exercised by the parent paying support as provided in (6) below, extraordinary educational expenses, extraordinary medical expenses for the child which are not paid by insurance, and the like.
- (6) These guidelines are designed to apply to situations where children are living primarily with one parent but stay overnight with the other parent at least as often as every other weekend from Friday to Sunday, two weeks in the summer and two weeks during holidays throughout the year. These guidelines are designed to consider the actual physical custody of the child(ren), regardless of whether custody is awarded to one parent and visitation to the other or such an arrangement is ordered to be joint custody or split custody. In situations where overnight time is divided more equally between the parents, the courts will have to make a case-by-case determination as to the appropriate amount of support (reference 1240-2-4-.04).
- (7) These guidelines shall be applied as a rebuttable presumption in all child support cases. If the court finds that the evidence is sufficient to rebut the presumption that the application of the guidelines is the correct amount to be awarded, then the court must make a written or specific finding that the application of the child support guidelines would be unjust or inappropriate in that particular case. Findings that rebut these guidelines must state the amount that would have been required under the

(Rule 1240-2-4-.02, continued)

guidelines and include a justification for deviation from the guidelines which takes into consideration the best interest of the child.

Authority: TCA § 36-5-101; 42 USC § 667(b); 45 CFR §§ 302.56; 303.8(d); and Public Chapter 987 (1994).

Administrative History: New rule filed December 18, 1987; effective February 1, 1988. Amendment filed August 25, 1989; effective October 13, 1989. Amendment filed September 29, 1994; effective December 14, 1994.

1240-2-4-.03 GUIDELINES FOR CALCULATING CHILD SUPPORT AWARDS.

- (1) For clarity, the parent with whom the child(ren) live primarily will be referred to as the obligee and the parent with whom the child(ren) do not primarily live will be referred to as the obligor.
- (2) the child support award is based on a flat percentage of the obligor's net income as defined in paragraph (4) below depending on the number of children for whom support is being set in the instant case. While the income of the obligee should not be considered in the calculation of or as a reason for deviation from the guidelines in determining the support award amount, the formula presumes that the obligee will be expending at least an equal percentage of net income as that of the obligor for the support of the children for whom support is sought.
- (3) Gross income.
 - (a) Gross income shall include all income from any source (before taxes and other deductions), whether earned or unearned, and includes but is not limited to, the following: wages, salaries, commissions, bonuses, overtime payments, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, benefits received from the Social Security Administration, i.e., Title II Social Security benefits, workers compensation benefits whether temporary or permanent, judgments recovered for personal injuries, unemployment insurance benefits, gifts, prizes, lottery winnings, alimony or maintenance, and income from self-employment. Income from self-employment includes income from business operations and rental properties, etc., less reasonable expenses necessary to produce such income. Depreciation, home offices, excessive promotional, excessive travel, excessive car expenses or excessive personal expenses, etc., should not be considered reasonable expenses. "In kind" remuneration must also be imputed as income, i.e., fringe benefits such as a company car, the value of on-base lodging and means in lieu of BAQ and BAS for a military member, etc.
 - (b) Variable income such as commissions, bonuses, overtime pay, dividends, etc., should be averaged and added to the obligor's fixed salary.
 - (c) Gross income does not include the following: child support payments received by either parent for the benefit of other children; benefits received from means-tested public assistance programs otherwise exempt by federal law or regulations such as aid to families with dependent children (AFDC) and food stamps or Supplemental Security Income (SSI).
 - (d) If an obligor is willfully and voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, as evidenced by educational level and/or previous work experience.
 - (e) When establishing an initial order and the obligor fails to produce evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years), and the court has no other reliable evidence of the obligor's income or income potential, gross income for the current and prior years should be determined by imputing annual income of \$25,761. This figure represents an average of the medial annual income for Tennessee families as provided by the 1990 US Census of Income and Poverty data for Tennessee Counties.

(Rule 1240-2-4-.03, continued)

- (f) When cases with established orders are reviewed for adjustment and the obligor fails to produce evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support), and the court has no other reliable evidence of the obligor's income or income potential, the court should enter an order to increase the child support obligation by an increment not to exceed ten percent (10%) per year for each year since the support order was entered or last modified.
- (4) Net income is calculated by subtracting from gross income of the obligor FICA (6.2% Social Security + 1.45% Medicare for regular wage earners and 12.4% Social Security + 2.9% Medicare for self-employed, as of 1991, or any amount subsequently set by federal law as FICA tax), the amount of withholding tax deducted for a single wage earner claiming one withholding allowance (copies of appropriate table will be provided to courts with guidelines), and the amount of child support ordered pursuant to a previous order of child support for other children. Payment may be ordered to be weekly, biweekly (every two weeks), semi-monthly, or monthly. In calculating net income for obligors who are under federal or railroad retirement programs or any other mandatory retirement plan which operates in lieu of the Social Security retirement program, the retirement contribution up to the current FICA tax rate should be subtracted from the gross income. Children of the obligor who are not included in a decree of child support shall not be considered for the purposes of reducing the obligor's net income or in calculating the guideline amount. In addition, these children should not be considered by the court as a reason for deviation unless they meet the requirements of rule 1240-2-4-.04(4).
- (5) After determining the net income of the obligor, that amount is to be rounded up to the next dollar. That amount is then multiplied by the percentage below that corresponds to the number of children for whom support is being set in the instant case. The percentages are:

| | | | | | |
|-----------------|-----|-----|-----|-----|-----------|
| No. of children | 1 | 2 | 3 | 4 | 5 or more |
| % of income | 21% | 32% | 41% | 46% | 50% |

After this calculation is made, if there are no changes to be made pursuant to paragraph 1240-2-4-.04 below, then this is the amount of the child support award.

Authority: TCA § 36-5-101; 42 USC § 667(b); 45 USC § 231; 5 CFR § 838; 45 CFR § 302.56; and Public Chapter 987 (1994). **Administrative History:** New rule filed December 18, 1987; effective February 1, 1988. Amendment filed August 25, 1989; effective October 13, 1989. Amendment filed September 29, 1994; effective December 14, 1994.

1240-2-4-.04 CRITERIA FOR DEVIATION FROM GUIDELINES

- (1) Since these percentage amounts are minimums, the court shall increase the award calculated in Rule 1240-2-4-.03 for the following reasons:
- (a) If the obligor is not providing health insurance for the child(ren), an amount equal to the amount necessary for the obligee to obtain such insurance shall be added to the percentage calculated in the above rule.
- (b) If the child(ren) is/are not staying overnight with the obligor for the average visitation period of every other weekend from Friday evening to Sunday evening, two weeks during the summer and two weeks during holiday periods throughout the year, then an amount shall be added to the percentage calculated in the above rule to compensate the obligee for the cost of providing care for the child(ren) for the amount of time during the average visitation period that the child(ren) is/are not with the obligor [reference 1240-2-4-.02(6)]. The court may consider a downward deviation from the guidelines if the obligor demonstrates that he/she is consistently providing more care and supervision for the children than contemplated in the rule.

(Rule 1240-2-4-.04, continued)

- (c) Extraordinary educational expenses and extraordinary medical expenses not covered by insurance shall be added to the percentage calculated in the above rule.
 - (d) Any other extraordinary expenses for the child(ren) may justify increasing the support calculated in the above rule if the court finds that equity requires it.
 - (e) In cases where initial support is being set, a judgment must be entered to include an amount due for monthly support from the date of the child's birth or date of separation or date of abandonment whichever is appropriate, until the current support order is entered. This amount must be calculated based upon the guidelines using the average income of the obligor over the past two years and is presumed to be correct unless rebutted by either party. An amount should be included in the order to reduce the arrears judgment on a monthly basis within a reasonable time.
 - (f) Valuable assets and resources (expensive home or automobile which seem inappropriate for the income claimed by the obligor) of the obligor should be considered for the purpose of imputing income and increasing the support award in any case if the court finds that equity requires it.
- (2) Deviation from the guidelines may be appropriate in other cases when the court finds it is in the best interest of the child(ren) including, but not limited to, the following:
- (a) In cases where the Department of Human services has taken custody of the child(ren) pursuant to a neglect, dependent, or abuse action and where the parent(s) is/are making reasonable efforts to secure the return of the child(ren) to the family; and/or
 - (b) In cases where physical custody of the child(ren) is more equally divided between the parties than occurs in a situation where one party has an average amount of overnight visitation as defined in 1240-2-4-.02(6).
- (3) The court must consider all net income of the obligor as defined according to 1240-2-4-.03 of this rule. The court must order child support based upon the appropriate percentage to the custodial parent up to a net \$10,000 per month of the obligor's income. When the net income of the obligor exceeds \$10,000 per month, the court may consider a downward deviation from the guidelines if the obligor demonstrates that the percentage applied to the excess of the net income above \$10,000 a month exceeds a reasonable amount of child support based upon the best interest of the child and the circumstances of the parties. The court may require that sums paid above the percentage applied to the net income above \$10,000 be placed in an educational or other trust fund for the benefit of the child.
- (4) In instances of extreme economic hardship, such as in cases involving extraordinary medical needs not covered by insurance or other extraordinary special needs for the child(ren) of the obligor's current family, [child(ren) living in the home with the obligor for whom the obligor is legally responsible] deviation from the guidelines may be considered in order to achieve equity between the parties when the court so finds.
- (5) In deviating from the guidelines, primary consideration must be given to the best interest of the child(ren) for whose support the guidelines are being utilized.

Authority: Public Law 98-378; 42 USCA § 667(b) and 45 CFR § 302.56; Public Law 100-485; Public Chapter 206, Acts of 1989. **Administrative History:** New rule filed August 25, 1989; effective October 13, 1989. Amendment filed September 29, 1994; effective December 14, 1994. Amendment filed July 22, 1997; effective October 5, 1997.